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R. VOIGHT SHEALY  
MATERIALS MANAGEMENT OFFICER

May 16, 2008

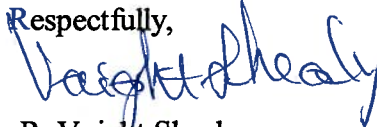
Jim Carlson, ISP  
President  
OCC Associates, Inc.  
3275 Brookview Drive N.E.  
Marietta, GA 30068

Re: **DECISION**  
**IN THE MATTER OF: Protest**  
Provide & Install Merchandise Fixtures for the College Bookstore  
Trident Technical College  
SOL NO.: 021308-150-125RT-03/07/08  
CASE NUMBER: 2008-117

Dear Mr. Carlson:

Please find enclosed the Decision of the Chief Procurement Officer concerning the administrative review, relative to the referenced matter.

If I can be of assistance to you in this matter, please let me know. Also, please note that a copy of this Decision has been posted today on the sixth floor of the Materials Management Office, 1201 Main Street, Columbia, South Carolina.

Respectfully,  
  
R. Voight Shealy  
Chief Procurement Officer  
for Goods and Services

enclosure

cc: Keith McCook, Assistant General Counsel  
Carol Belcher, Procurement Director, Trident Technical College

<b>STATE OF SOUTH CAROLINA</b>	)	<b>BEFORE THE CHIEF PROCUREMENT OFFICER</b>
<b>COUNTY OF RICHLAND</b>	)	
	)	<b>DECISION</b>
In the Matter of Protest of:	)	
	)	<b>CASE NO.: 2008 - 117</b>
OCC Associates, Inc.	)	
	)	
Trident Technical College	)	<b>POSTING DATE:</b>
SOL No.: 021308-150-125RT-3/7/08	)	
Provide & Install Merchandise Fixtures	)	<b>MAY 16, 2008</b>
<u>For the College Bookstore</u>	)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from OCC Associates, Inc. (OCC). With this invitation for bids (IFB), Trident Technical College (TTC) attempts to procure merchandise fixtures for the college bookstore. In the letter, OCC protested TTC's intent to award to College Store Design (CSD) alleging:

- There were two bids opened on the project dated 3/27/08, our bid: OCC Associates, Inc. \$112,910, and College Store Design who bid \$147,033.30.
- When I called Bob Tyner Friday he told me that College Store Design was selected because we offered a different type of locker than the ones listed on the bid. Mr. Tyner informed me that our bid was disqualified because of Item #6 on the bidding instructions.
- When the bid first went out, there were many questions raised by us and the other bidder. We had to wait several days for Mr. Tyner to get us the answers to these questions, before we could begin our work on the bid. We were just spinning our wheels because of the unclear fixture specifications that went out for bids. It apparently got so bad that at one point we were told in writing by Mr. Tyner that there will be "No More Questions."
- It's my belief the person who wrote the fixture specifications was not a fixture person or expert on the subject. The only difference between our bid (lowest) and the high bid are the lockers we are providing. The locker portion of the bid was the last three items.
- The question we had and still have now is why anyone would specify student coin-operated lockers that are only 12" deep (see item #19 & #20). Our bid included coin-operated lockers 18" deep.
- We also used a locker vendor that was not listed on the bidding documents.
- We are being excluded because of our knowledge of the fixture business and because we are providing a higher quality product for 30% less.
- When we sent in our bid we included a descriptive on American Locker Co. products, along with a color chart. We could easily prove our claim that the lockers we are providing are just what we say.

- [A]pparently no one from college Procurement checked into our offer on the lockers, they were too busy finding some technicality to disqualify us and cost the college over \$35,000.

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As the issues to be decided are clear, this decision is prepared without the benefit of a hearing.

### **NATURE OF PROTEST**

The letter of protest is attached and incorporated herein by reference.

### **FINDINGS OF FACT**

The following dates and facts are relevant to the protest:

1. On February 19, 2008, TTC issued the IFB. Regarding the lockers, the IFB read:

#### **Bidding Instructions:**

1. Bid manufacturer as specified only.
5. For steel lockers, acceptable manufacturers are listed in attached architectural section 10500, Part 2.1.
6. Substitutions are not permitted without prior written consent from Trident Technical College Procurement Office. Any request(s) for substitutions must be made and be approved prior to bid opening.  
[IFB, p. 10]

MANUFACTURER: Subject to compliance with requirements, provide products of one of the following:

- A. Interior Steel Equipment Co.
  - B. List Industries, Inc.
  - C. Lyon Metal Products, Inc.
  - D. Medart, Inc
  - E. Penco Products, Inc.
  - F. Republic Steel Corp., Industrial Products Division
- [IFB, p. 36. PART 2 PRODUCTS]

Locker size: 12" W X 12" D x 36" H.

[IFB, p. 37, 2.4 STANDARD DOUBLE TIER LOCKERS]

According to the IFB, TTC informed prospective bidders that it would accept questions until February 27, 2008 @ 5:00 EST.

2. On March 5, 2008, TTC issued Amendment #1 extending the bid opening awaiting answers to the questions from the architect that TTC contracted with to prepare the specifications.
3. On March 7, 2008, TTC issued Amendment #2 answering 13 questions raised by prospective bidders. None of the questions raised appear related to the lockers or relevant to the issues raised here.

4. On March 10, 2008, TTC issued Amendment #3 answering a final question and rescheduling the bid opening to March 27, 2008. The question raised does not appear related to the lockers or relevant to the issues raised here.

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5. On March 27, 2008, TTC opened the bids as stated above by the protestant.
6. On April 17, 2008, Bob Tyner, TTC Procurement Officer, prepared a written determination rejecting OCC's bid as nonresponsive citing: 1) "The lockers offered are manufactured by American Locker Company, which is not a company on the list of approved manufacturers", 2) "The offeror did not request this substitution in writing prior to bid opening as required by bidding instruction #6", and 3) "OCC Associates offered lockers that are 18" deep while the Architectural Specification Section 10500, part 2.5 specifies the locker dimensions as being 12" deep." TCC posted an intent to award to College Store Design.
7. On April 20, 2008, OCC submitted its protest to the CPO.

### **CONCLUSIONS OF LAW**

TTC employed an architect to draft the Architectural Specification Section of the IFB in an attempt to develop trustworthy specifications. Those specifications, which were published February 19, 2008, required that bidders bid lockers from any one of six manufacturers. OCC disregarded the list of authorized manufacturers. OCC offered a bid substituting lockers manufactured by American Locker Company, which was not one of the six authorized manufacturers. As OCC admitted in its protest letter, "We also used a locker vendor that was not listed on the bidding documents."

TTC allowed bidders to substitute lockers from other manufacturers provided the bidder "request this substitution in writing prior to bid opening as required by bidding instruction #6." OCC did not seek TTC's approval of its substitution prior to bidding.

TTC specified lockers no more than 12 inches deep. OCC's offered lockers 18 inches deep despite the specifications that required that lockers be 12 inches deep.

The Consolidated Procurement Code (Code) requires that an invitation for bids be awarded "notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids." [11-35-1520(10)] The Code defines a responsive bidder as "a

person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.” [11-35-1410(7)] OCC’s bid failed to meet this standard. Thus, TTC rightfully rejected it as nonresponsive.

Now, OCC complains vigorously about the specifications that have been published since February 19, 2008.

The Code authorizes bidders’ two opportunities to protest, as follows:

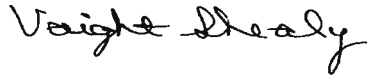
(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

OCC attempts to protest TTC’s award to College Store Design, but actually challenges the specifications. OCC complains about the specifications not allowing bidders to submit lockers manufactured by American Locker Company, but OCC could have protested the specifications within 15 days of their being published on February 19, 2008. OCC did not protest the specifications. Additionally, OCC could have submitted its substitution of American Locker Company lockers prior to the bid opening in accordance with the IFB. OCC did not.

## **DETERMINATION**

OCC failed to protest the specifications as they were published in the IFB, thereby forfeiting its protest rights offered under the Code. Consequently, the CPO lacks jurisdiction to hear the matter now. The protest is dismissed.



R. Voight Shealy  
Chief Procurement Officer  
for Supplies and Services

May 16, 2008

Date

Columbia, S.C.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2007 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2007 S.C. Act No. 117, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

**Martin, Deb**

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**From:** Protest-MMO  
**Sent:** Sunday, April 20, 2008 8:50 PM  
**To:** \_MMO - Procurement; Shealy, Voight  
**Subject:** FW: Protest solicitation #02138-150-125RT-03/07/08

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**From:** Jim Carlson[SMTP:OCCASSOCIATES@MINDSPRING.COM]  
**Sent:** Sunday, April 20, 2008 8:50:12 PM  
**To:** Protest-MMO  
**Subject:** Protest solicitation #02138-150-125RT-03/07/08  
**Auto forwarded by a Rule**

Dear Sir/Madam,

We are writing to you today to see if we can explain our position on what we perceive to be an extremely unfair situation that has taken place on the above solicitation. The solicitation is for new bookstore fixtures. Our company has been designing, providing all fixtures, and installing college bookstores nationwide since 1972. There were two bids opened on the project dated 3/27/08, our bid: OCC Associates, Inc \$112,910, and College Store Design who bid \$147,033.30. The award for this project took until April 17th, where Bob Tyner has intent to award the job to the high bidder. Nearly ninety percent of this project is made by the Lozier Corporation, we bid on Lozier the same as College Store Design. When I called Bob Tyner Friday he told me that College Store Design was selected because we offered a different type of locker than the ones listed on the bid. Mr. Tyner informed me that our bid was disqualified because of Item #6 on the bidding instructions. To follow are reasons we feel are acceptations to Item #6. When this bid first went out, there were many questions raised by us and the other bidder. We had to wait several days for Mr. Tyner to get us the answers to these questions, before we could begin our work on the bid. We were just spinning our wheels because of the unclear fixture specifications that went out for bids. It apparently got so bad that at one point we were told in writing by Mr. Tyner that there will be "No More Questions." Believe me we don't like asking questions if we don't have to. It's my belief the person who wrote the fixture specifications was not a fixture person or expert on the subject. The only difference between our bid (lowest) and the high bid are the type of lockers we are providing. The locker portion of the bid was the last three items. By this time we were informed that we can't ask any more questions, and we had a very large question staring us in the face. The question we had and still have now is why anyone would specify student coin-operated lockers that are only 12" deep (see item #19 & #20). It is our observation after 35 plus years in the college bookstore design and fixture business, that students just about all carry backpacks around with them. Usually they are full of books or have a laptop in them. A loaded backpack will not go in a 12" deep locker that has an inside measurement of less than 11" in depth. Our bid included coin-operated lockers 18" deep, which are more expensive than the specified ones. We also used a locker vendor that was not listed on the bidding documents. To explain that, we first contacted Penco, a company that is listed on the bidding documents. After a few days, Penco informed us they do not make a coin-return locker. At that point we had no more time left, we could ask no more questions. We decided to have the American Locker & Security Company, give us

5/16/2008



prices. American Locker is the largest manufacturer of lockers in the country. They are in more college bookstores than all 6 of approved locker manufacturers combined. Why they were not on the list of approved locker providers has to be because the person or persons who put this together, simply does not know the fixture industry. To exclude the leader in this industry who's superior quality and excellent customer service, is flat out wrong. We are being excluded because of our knowledge of the fixture business and because we are providing a higher quality product for 30% less. It took college procurement 3 weeks to make the initial award of this project to the high bidder who is not providing the same quality of lockers as we are. When we sent in our bid we included a descriptive brochure on American Locker Co. products, along with a color chart. We could easily prove our claim that the lockers we are providing are just what we say. We feel we have been robbed of this award, we are going to get Mary Thornley's opinion. In closing we know the high bidder College Store Design is owned by the billion dollar Corporation called Nebraska Books, maybe their influence had something to do with the initial award. We cannot believe it took three weeks to award this job with just two bids, apparently no one from college Procurement checked into our offer on the lockers, they were too busy finding some technicality to disqualify us and cost the college over \$35,000. Hopefully you might see our point.

With fairness in mind, I remain respectfully,

Jim Carlson, ISP  
President  
OCC Associates, Inc.

p 770-973-8206  
f 770-752-9795